In the

Supreme Court of the United States

OCTOBER TERM 1974

No. 74-1498

ROSEMARY WILLIAMS,

Petitioner,

v.

W. L. (LEW) STERRETT, County Judge,

Respondent.

BRIEF IN OPPOSITION TO GRANTING WRIT OF CERTIORARI

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Respondent, W. L. (Lew) Sterrett, respectfully prays that a writ of certiorari not be granted to review the judgment of the United States Court of Appeals, Fifth Circuit, entered in the above entitled case on April 1, 1975.

JURISDICTION

Petitioner has cited no authority for conferring jurisdiction in the United States Supreme Court to review the judgment in question. Furthermore, the district court does not have jurisdiction in the cause of action initially filed by the petitioner, Rosemary Williams.

QUESTIONS PRESENTED

1. Whether the Plaintiff established that there is jurisdiction of the subject matter in District Court?

2. Whether the Petition for Temporary Restraining Order and Temporary Injunction, to Become a Permanent Injunction stated a claim upon which relief could be granted?

3. Whether the cause of action is now moot?

STATUTES INVOLVED

The pertinent statutes are: 28 U.S.C. § 1292(a)(1); 28 U.S.C. § 1443; and Articles 13.08c-2, subsections (a)(b)(c), and 13.50 of the Texas Election Code. These statutes are set out in Appendix A.

STATEMENT OF THE CASE

On October 21, 1974, the petitioner, Rosemary Williams, filed a "Petition for Temporary Restraining Order and Temporary Injunction, to Become a Permanent Injunction" seeking to enjoin W. L. (Lew) Sterrett, the County Judge of Dallas County, Texas, from holding the general election for county judge on November 5, 1974. The summons was served on Judge Sterrett on October 22, 1974, by a United States Marshal. In her petition Ms. Williams alleged that she had paid a filing fee in the sum of $150.00 in lieu of filing a nominating petition as authorized by the Texas election laws, "Chapter B542, S.B. No. 11" (Article 13.08c-2 of the Texas Election Code), for having her name placed on the general election ballot for county judge. She alleged further that Judge Sterrett, in violation of the Texas election laws, refused to place her

name on the ballot and she, therefore, was bringing suit to enforce Article 13.08c-2 of the Texas Election Code. On November 8, 1974, Ms. Williams filed a "Supplemental Pleading" asking for a three-judge panel to hear the case since her name had not appeared on the ballot for county judge when the general election was held on November 5, 1974. On November 11th the defendant, Judge Sterrett, filed a "Motion to Dismiss" for lack of subject matter jurisdiction, for failure to state a claim, and because the cause was moot. On November 14, 1974, Ms. Williams filed a "Motion for Leave to Amend" with an attached amendment which alleged that the failure to place her name on the ballot of the general election was sex discrimination, and that in conducting the election without placing her name on the ballot Judge Sterrett had violated a temporary injunction of the district court.

On November 21, 1974, the district court dismissed the cause of action on the basis that the court lacked subject matter jurisdiction of the cause, that the complaint failed to state a claim against the defendant upon which relief could be granted and that the cause was moot since the 1974 general election took place on November 5, 1974. On November 25, 1974, Ms. Williams moved for leave to amend under Rule 59(e) and Rule 60(b), Fed. R. Civ. P., alleging that Judge Sterrett should be held in contempt for allowing the general election to proceed without her name on the ballot since he was "under a temporary injunction and a restraining order to become permanent." The motion was denied by the district court.

On appeal, the Fifth Circuit affirmed the order of the district court without opinion under the Fifth Circuit's local rules.

REASONS FOR NOT GRANTING THE WRIT

The Court should not grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit because this case contains none of the reasons for review indicated in Supreme Court Rule 19 and the cause of action is on its face spacious. Petitioner Williams urges the Court to review this case because the decision below is incorrect and that there is a conflict of decisions, but Ms. Williams fails to cite any cases which could conceivably be considered in conflict with the decisions of the Fifth Circuit and the district court in this cause.

I. The Plaintiff Failed to Establish Subject Matter Jurisdiction in the District Court.

Federal courts are courts of limited jurisdiction, empowered to hear only such cases authorized by the Constitution and a jurisdictional grant by Congress. Therefore, the presumption is that a federal court lacks jurisdiction of subject matter in a particular case until the plaintiff has affirmatively shown that the district court does have jurisdiction of the subject matter. *KVOS, Inc. v. Associated Press,* 299 U.S. 269 (1936); *Le Mieux Bros. v. Tremont Lumber Co.,* 140 F.2d 387 (5 Cir. 1944); Rule 8(a), Fed. R. Civ. P.; C. Wright, Law of Federal Courts, § 7 (2 ed. 1970).

The "Petition for Temporary Restraining Order and Temporary Injunction, to Become a Permanent Injunction" did not

state any jurisdictional grounds for the federal district court. Ms. Williams merely alleged that the action was brought under 28 U.S.C. § 2284(2), which is not a jurisdictional statute at all but merely deliniates procedures to be followed by three-judge district courts. The "Supplemental Pleading," also filed by Ms. Williams, alleged that she had been "deprived her constitution rights under Title 28 § 1343, and Title 28 § 1443 . . . ." 28 U.S.C. § 1443 authorizes defendants in certain civil rights cases in state courts to remove the cause of action to a federal district court. It has no application to this cause of action. The plaintiff's reference to 28 U.S.C. § 1343 was totally nebulous. The plaintiff gave no indication whatsoever in the district court that she was alleging a violation of 42 U.S.C. § 1985, to which the first two subdivisions of § 1343 apply, that she was alleging that her constitutional rights had been violated under color of state law, or that she was entitled to the protection of her civil rights by any applicable act of Congress. Indeed, throughout all her documents filed in the district court she continued to allege that she was bringing the suit "to enforce the state statutes." Her general allegations that the failure to place her name on the ballot for the general election as a candidate for county judge violated the Fourteenth Amendment were not sufficient to bring purely local problems within federal jurisdiction. *Simmons v. Jones,* 478 F.2d 321 (5 Cir. 1973); *McDowell v. State of Texas,* 465 F.2d 1342 (5 Cir. 1971), adopted as opinion of court en banc, 465 F.2d 1349 (1972).

Furthermore, since the petition was "to enforce a state statute," the federal courts should abstain from hearing the

case as a matter of comity and require the plaintiff to apply to the Texas courts for rectifying alleged deviations from Texas law. *Simmons v. Jones,* supra.

28 U.S.C. § 1292(a)(1) is not pertinent to this case since it concerns interlocutory appeals while Ms. Williams' appeal is from a final order of the district court. Furthermore, the respondent has never contended that the Fifth Circuit did not have jurisdiction of the appeal to review the decision of the district court.

II. The Petition Failed to State a Claim Against Judge Sterrett Upon Which Relief Could Be Granted.

As previously stated, the basis of Ms. Williams' suit was that Judge Sterrett allegedly violated Texas election laws by not placing her name on the ballot for the general election as a candidate for county judge. An allegation of a mere violation of state law unaccompanied by more precise claims of federal right than a general lack of due process for equal protection is not the sort of deprivation of rights secured by the Constitution of the United States or an Act of Congress within the meaning of 28 U.S.C. § 1343. *Simmons v. Jones,* supra; *McDowell v. State of Texas,* supra.

Furthermore, it is apparent upon the face of the pleadings filed in the district court that the petitioner was not considering the appropriate state statute. She sought to have her name placed on the ballot for the general election as an independent candidate for county judge. However, Article 13.08c-2 of the Texas Election Code, upon which she relies as authority for her contention that she was entitled to have her name placed

upon the ballot of the general election by paying a filing fee, relates only to the conduct of primary elections. The statute governing the procedures by which non-partisan or independent candidates can have their name placed upon the ballot in the general election is Article 13.50 of the Texas Election Code. That statute specifies that one of the requirements for a person to have their name placed upon the official ballot for a county office is to file with the county judge the written application signed by qualified voters, the number of which must be 5% of the entire vote cast for Governor in that county at the last preceding general election. There is no option for a person to place their name on the general ballot by paying a filing fee instead of submitting a petition with the requisite number of signatures of qualified voters. The plaintiff has never alleged that she has complied with the requirements for independent candidates; instead she has erroneously relied upon provisions of the Texas Election Code pertaining only to primary elections.

The petitioner has attempted to instill some validity in her cause of action by adding the assertion that Judge Sterrett was in contempt of an order of the district court for allowing the general election to proceed on November 5, 1974, without her name on the ballot as a candidate for county judge. The docket sheet of the case clearly shows that the district court never granted any temporary restraining order, temporary injunction or permanent injunction. The petitioner's misunderstanding of the legal significance of the filing of her petition and service of summons by the marshal upon the defendant are clearly shown in the first paragraph of her statement on page 2

of her "Petition for a Writ of Certiorari," "The petitioner filed her 'Interlocutory Injunction' October 21, 1974, before the November 5, 1974, general election and the said respondent was served by the United States Marshal on October 22, 1974 . . . . This said respondent was under the injunction at the time of the election and did not obey the orders of the court, at the time of the election." There is no merit whatever in the petitioner's contention that Judge Sterrett violated an order of the district court and was, therefore, in contempt of court.

The petitioner's reliance upon *Riverside and Dan River Cotton Mills, v. Menefee*, 237 U.S. 189 (1915) is totally misplaced. No claim has been brought against the petitioner and no obligation has been placed upon her without the benefit of a hearing. Hence, the district court correctly held that the petitioner had failed to state a claim upon which relief could be granted and the Fifth Circuit correctly affirmed.

III. The Cause of Action Is Now Moot.

Furthermore, this court should not grant a writ of certiorari because the present cause of action is now moot. The petitioner sought to have her name placed upon the ballot for the general election on November 5, 1974. That election has already been conducted and her efforts to have her name placed upon that ballot are now moot. Indeed, the petitioner has already acknowledged as much in an amended motion in the district court and in her brief to the Fifth Circuit. Petitioner has further claimed that Judge Sterrett would continue this allegedly discriminatory course of action against her in future elections; however, Judge Sterrett was not re-elected in the November

5, 1974, general election. Therefore, the petitioner's request for future injunctive relief from Judge Sterrett is also mooted. See *Spomer v. Littleton*, 414 U.S. 514 (1974).

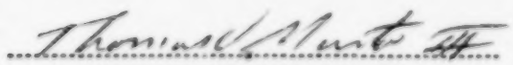
Since this case involves no important question of federal law, since the petitioner has not been able to show any conflict of the decision of the Fifth Circuit with any decision of another court of appeals on the same matter or with an applicable decision of this Court, and since the decisions of the courts below are so eminently correct that this cause of action should be dismissed for lack of merit on the face of the petitioner's pleadings and the applicable Texas statutes, no writ of certiorari should be granted in this cause of action.

CONCLUSION

For the reasons stated above, the petitioner's Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Earl Luna



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